

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

DALE A. FRONK,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2014-T-0083
TONI A. MARCHESKIE-FRONK aka	:	
TONI A. MARCHESKIE, et al.,	:	
Defendant-Appellant,	:	
MATTHEW BELLIN,	:	
Intervening Appellee.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2013 CV 2068.

Judgment: Affirmed.

Randil J. Rudloff, Guarnieri & Secret, P.L.L., 151 East Market Street, P.O. Box 4270, Warren, OH 44482 (For Plaintiff-Appellee).

Bruce M. Broyles, 5815 Market Street, Suite 2, Youngstown, OH 44512 (For Defendant-Appellant).

Rebecca A. Smith, Law Offices of Rieger, Carpenter & Daugherty, 410 Mahoning Avenue, N.W., P.O. Box 1429, Warren, OH 44482 (For Intervening Appellee).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Toni A. Marcheskie-Fronk aka Toni A. Marcheskie, appeals from the August 22, 2014 judgment of the Trumbull County Court of Common Pleas,

confirming a foreclosure sale and ordering a distribution of proceeds and from the September 8, 2014 “Corrected” judgment entry. For the reasons that follow, we affirm.

{¶2} Appellant and appellee, Dale A. Fronk, were married in 1989 and had two children. In 1992, the parties acquired title to property located at 2053 Red Fox Run, Cortland, Trumbull County, Ohio 44410. In 1998, the parties divorced.

{¶3} According to the terms of the divorce decree, Mr. Fronk transferred by quit claim deed all of his right, title, and interest in the foregoing property to appellant. However, Mr. Fronk retained a \$40,000 equitable interest in the premises, plus interest, which became due and payable upon a variety of events, including the emancipation of their youngest child.

{¶4} In June 2013, the parties’ youngest child became emancipated, thereby obligating appellant to pay Mr. Fronk upon the marital equity lien. Despite a written demand, appellant did not pay Mr. Fronk pursuant to the terms of the divorce decree.

{¶5} On October 11, 2013, Mr. Fronk filed a complaint in foreclosure against appellant and others.¹ Mr. Fronk demanded judgment against appellant in the sum of \$75,400 plus interest at six percent per annum on the principal sum of \$40,000. Appellant and some other defendants did not file an answer to the complaint. As a result, Mr. Fronk filed a motion for default judgment on December 18, 2013.

{¶6} On February 4, 2014, the trial court issued an “Order of Foreclosure Sale.” Appellant did not appeal that entry. The property was appraised on June 6, 2014 for \$147,000. A notice of sheriff’s sale was issued on July 11, 2014. The sale was

1. In addition to appellant, the other named defendants included: Trumbull County Treasurer; Capital One Bank; OPRS Communities; Richard Duke Harbison; Society Mortgage Company; Ohio Department of Taxation; and Autumn Hills Nursing and Rehabilitation. Out of all of the defendants, only appellant is a named party to this appeal.

scheduled to take place on August 21, 2014. The notice indicated that the property must be sold for a minimum two-thirds bid of \$98,000.

{¶7} Matthew Bellin, a disinterested, bona fide purchaser, was the highest bidder at the August 21, 2014 sheriff's sale. Mr. Bellin purchased the property for \$105,000, \$7,000 above the minimum requirement.

{¶8} The trial court confirmed the sale the next day, August 22, 2014. The court later issued a corrected confirmation of sale on September 8, 2014.² Appellant timely appealed from both judgment entries and asserts the following assignment of error for our review:³

{¶9} "The trial court abused its discretion in confirming the order of sale the same day as the Sheriff's Sale without carefully reviewing the procedure, as evidenced by the need to file a corrected order of confirmation."

{¶10} "The decision whether to confirm or set aside a sheriff's sale is left to the sound discretion of the trial court." *Atlantic Mtge. & Invest. Corp. v. Sayers*, 11th Dist. Ashtabula No. 2000-A-0081, 2002 Ohio App. LEXIS 856, *5-6 (Mar. 1, 2002), citing *Ohio Sav. Bank v. Ambrose*, 56 Ohio St.3d 53, 55 (1990). "If the court, after examining the proceedings taken by the officers, finds the sale was made in conformance with R.C. 2329.01 to 2329.61, inclusive, it shall confirm the sale." *Ambrose* at 55, citing R.C.

2. The main difference between the two confirmations of sale, which we will consider together, was that the corrected confirmation increased the fee due to the Trumbull County Auditor for conveyance tax from \$408 to \$420.50 and included \$28 for the Trumbull County Recorder to record the deed. Mr. Bellin filed a writ of possession on September 11, 2014, to which appellant filed a motion for stay. The trial court denied appellant's motion. Mr. Bellin has been in possession of the subject premises since November 2014, and has made improvements to the property.

3. Appellant filed her appellate brief on January 20, 2015. On January 26, 2015, Mr. Bellin filed a motion to intervene in the appeal pursuant to Civ.R. 24. No brief or memorandum in opposition to the motion was filed. Because Mr. Bellin has a claimed interest in the property and the outcome of this appeal, this court granted his motion to intervene on February 23, 2015. Mr. Bellin, as intervening appellee, filed an appellate brief on March 13, 2015. Appellee, Mr. Fronk, did not file a brief with this court.

2329.31. “The court’s decision will not be disturbed absent an abuse of that discretion.”
Sayers at *6.

{¶11} The term “abuse of discretion” is one of art, connoting judgment exercised by a court which neither comports with reason, nor the record. *State v. Ferranto*, 112 Ohio St. 667, 676-678 (1925). An abuse of discretion may be found when the trial court “applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact.” *Thomas v. Cleveland*, 176 Ohio App.3d 401, 2008-Ohio-1720, ¶15 (8th Dist.).

{¶12} In this case, appellant incorrectly asserts the trial court confirmed the sale “the same day as the Sheriff’s Sale.” Rather, the record reveals the sheriff’s sale was held on August 21, 2014. The trial court initially confirmed the sale on August 22, 2014. Thus, the trial court confirmed the sale a day *after* the sheriff’s sale.

{¶13} In addition, appellant maintains the trial court confirmed the sale “without carefully reviewing the procedure, as evidenced by the need to file a corrected order of confirmation.” Appellant contends that the haste at which the initial confirmation of sale was granted and the filing of a second, corrected confirmation is indicative of the trial court’s abuse of discretion. We disagree.

{¶14} There is no indication in the record, nor does appellant assert on appeal, that there were any procedural issues with the sale. In fact, appellant even concedes on page three of her appellate brief that “there is no statutorily mandated period of time that the trial court must wait” before confirming a sale.

{¶15} Rather, appellant relies on a Second District case, *Wells Fargo Bank, N.A. v. Fortner*, 2d Dist. Montgomery No. 26010, 2014-Ohio-2212, for the proposition that the

trial court abused its discretion in confirming the sale on August 22, 2014. However, her reliance on *Fortner* is misplaced. In *Fortner*, the Second District held that the trial court abused its discretion in confirming a sale because an issue remained pending before the court. *Fortner* at ¶2. Thus, the holding in *Fortner* applies to cases where there are still issues for the court to resolve. Such is not the case in the matter at bar.

{¶16} Upon review, it was well within the trial court's right to confirm the sale on August 22, 2014, a day following the sheriff's sale. On page one of the trial court's four-page August 22, 2014 entry, it stated the following:

{¶17} "The Court finds, after having carefully examined the return, that the sale was made in all respects, and conforming to law, and the orders of this Court, and hereby finds that the sale should be and hereby is approved and confirmed[.]"⁴

{¶18} Appellant duly points out that a corrected confirmation of sale was filed on September 8, 2014. As stated, the corrected confirmation mainly increased the fee due to the Trumbull County Auditor for the conveyance tax from the initial amount of \$408 to the proper amount of \$420.50. Specifically, the second confirmation listed the accurate figure of \$420.50 as the conveyance tax is \$4/\$1000 of the sales price (.004 x \$105,000 = \$420) plus \$.50 to transfer the parcel (\$420.50). Also, because the Trumbull County Recorder is due \$28 to record the deed, the second confirmation included that \$28 fee, which was not included in the original confirmation order. Upon consideration, these errors were minor as they were neither procedural nor relevant to the legality of the sale itself.

{¶19} Appellant further argues she should have had until at least the second confirmation order to redeem her property, since the confirmation of sale is the final bar

4. The trial court made the same pronouncement in its September 8, 2014 corrected confirmation of sale.

to her right of redemption. In support, appellant cites to R.C. 2329.31 and 2329.33, which state in part:

{¶20} “Upon the return of any writ of execution for the satisfaction of which lands and tenements have been sold, * * * if the court of common pleas finds that the sale was made, in all respects, in conformity with sections 2329.01 to 2329.61 of the Revised Code, it shall, * * * make an entry on the journal that the court is satisfied of the legality of such sale[.]” R.C. 2329.31(A).

{¶21} “In sales of real estate on execution or order of sale, at any time before the confirmation thereof, the debtor may redeem it from sale by depositing in the hands of the clerk of the court of common pleas * * * the amount of the judgment or decree upon which such lands were sold[.]” R.C. 2329.33.

{¶22} The instant foreclosure action spanned over a 10-month period. As stated, Mr. Fronk filed a foreclosure complaint on October 11, 2013. Appellant never filed an answer to the complaint. On February 4, 2014, the trial court issued an “Order of Foreclosure Sale.” Appellant never appealed that entry. A notice of sheriff’s sale was issued on July 11, 2014. The sale took place as scheduled on August 21, 2014. Mr. Bellin was the highest bidder and purchased the property. The trial court confirmed the sale the following day. Due to a very minor mathematical error and an omission of a \$28 recording fee in the initial confirmation of sale, the trial court issued a corrected confirmation on September 8, 2014. Although appellant relies on R.C. 2329.33 on appeal, there is no indication in the record that at any time prior to the sale, or after the sale, or even between the two confirmation orders, did she attempt to redeem her property.

{¶23} Accordingly, we determine the trial court did not abuse its discretion in confirming the sale on August 22, 2014 and issuing a corrected confirmation on September 8, 2014.

{¶24} For the foregoing reasons, appellant's sole assignment of error is not well-taken. The judgment of the Trumbull County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.